

GOVERNMENT OF TELANGANA
ABSTRACT

CONSUMER AFFAIRS FOOD & CIVIL SUPPLIES DEPARTMENT - Consumer Affairs – Service charges by Hotels and Restaurants – Designating the Legal Metrology Department (upto District Legal Metrology Officers and Inspector Legal Metrology Officers rank) as the Agency – Orders – Issued.

CONSUMER AFFAIRS, FOOD & CIVIL SUPPLIES (CS.I-CCS) DEPARTMENT

G.O.Ms.No. 9

Dated: 29-05-2017

Read the following :-

1. From the Deputy Secretary, Govt. of India, Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Letter No: J-24/9/2014-CPU(Pt)., dated : 14.12.2016.
2. From the Deputy Secretary, Govt. of India, Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, Letter No: J-24/9/2014-CPU(Pt)., dated : 21.04.2017.

ORDER :

In the letters 1st & 2nd read above, the Deputy Secretary, Government of India, Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs, New Delhi, has stated that it has come to the notice of the Ministry through number of complaints from consumers received in the National Consumer Helpline that hotels and restaurants are following the practice of charge “Service Charges” in the range of 5% - 20%, in lieu of tips and the consumer is forced to pay this charge irrespective of the kind of service provided to him. The consumers are also required to pay service tax on this service charge so collected by the hotels and restaurants.

2. Further, they have stated that the Consumer Protection Act, 1986 provides that a trade practice which, for the purpose of promoting the sale, use or the supply of any goods or for provisions of any service, adopts any unfair method or deceptive practice, is to be treated as an unfair trade practice. The said Act further provides that a consumer can make a complaint to the appropriate Consumer Forum established under the Act;

- (i) Unfair trade practice adopted by any trader or service provider;
- (ii) The services hired or availed of, suffered from deficiency in any respect;
- (iii) A trader or service provider as the case may be has charged for the goods or for the services “a price in excess of the price”
 - (a) Fixed by or under any law for the time being enforce,
 - (b) Displayed on the goods or any package containing such goods,
 - (c) Displayed on the price list exhibited by him or under any law for the time being in force, or
 - (d) Agreed between the parties.

3. Further, it is requested that the State Government may sensitize the companies, hotels and restaurants in the State regarding aforementioned provisions of the Consumer Protection Act, 1986. Hotels / restaurants may also be advised to disseminate information through display at the appropriate place in the hotels / restaurants that the “service charges” are discretionary / voluntarily and a consumer dissatisfied with the service can have it waived off.

4. Keeping in view of the above, the Government of India, while issuing the following guidelines, has informed that whereas, the Department of Consumer Affairs, Government of India is mandated to ensure that consumers are protected as per the provisions of the Consumer Protection Act, 1986.

(P.T.O.)

- (i) A component of service is inherent in provision of food and beverages ordered by a customer, pricing of the product therefore is expected to cover both the goods and service components.
- (ii) Placing of an order by a customer amounts to his / her agreement to pay the process displayed on the menu card along with the applicable taxes. Charging for anything other than the afore-mentioned, without express consent of the customer, would amount to unfair trade practice as defined under Section 2 (1) (r) of the Act.
- (iii) Tip or gratuity paid by a customer is towards hospitality received by him/her, beyond the basic minimum service already contracted between him / her and the hotel management. It is a separate transaction between the customer and the staff of the hotel or restaurant, which is entered into, at the customer's discretion.
- (iv) The point of time when a customer decides to give a tip / gratuity is not when he / she enters the hotel / restaurant and also not when he / she places order. It is only after completing the meal that the customer is in a position to assess quality of service and decide whether or not to pay a tip / gratuity and if so, how much. Therefore, if a hotel / restaurant considers that entry of a customer to a hotel / restaurant amounts to his / her implied consent to pay a fixed amount of service charge, it is not correct.
- (v) Further any restriction of entry based on this amounts to a trade practice which imposes an unjustified cost on the customer by way of forcing him / her to pay service charge as condition precedent to placing order of food and beverages, and as such it fails under "restrictive trade practice" as defined under Section 2 (1) (nnn) of the Act.
- (vi) As per the Consumer Protection Act,

Section – 2 (1) (b) – "Complainant" means (i) a consumer; or (ii) any voluntary consumer association registered under The Companies Act, 1956 or under any other law for the time being in force; or (iii) the Central Government or any State Government, who or which makes a complaint.

Section 2 (1) (c) - 'complaint' means any allegation in writing made by a complainant that –

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider,
- (iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price ---

- a) Fixed by or under any law for the time being in force;
- b) Displayed on the goods or any package containing such goods;
- c) Displayed on the price list exhibited by him by or under any law for the time being in force;
- d) Agreed between the parties;

- (vii) In view of the above, the bill presented to the customer may clearly display that service charge is voluntary, and the service charge column of the bill may be left blank for the customer to fill up before making payment.

- (viii) A customer is entitled to exercise his / her rights as a consumer, to be heard and redressed under provisions of the Act in case of unfair / restrictive trade practices and can approach a Consumer Disputes Redressal Commission / Forum of appropriate jurisdiction.
- (ix) Further, as per the Consumer Disputes Redressal Agencies can admit the complaint as per Section – 13 ie., Procedure on admission of complaint and as per Section – 14 ie., finding of the District Forum (1) (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat it.
- (x) The Union Ministry for Consumer Affairs has opined that the definition of complainant includes the State which can, by suitable order, designate any agency on it's behalf, to take up the activity.

5. Keeping in view of the above guidelines and also the Opinion rendered by the Union Ministry for Consumer Affairs, after detailed examination, Government of Telangana hereby designate the Legal Metrology Department (upto District Legal Metrology Officers and Inspector Legal Metrology Officers) as the Agency to take up above activity relating to Consumer Affairs.

6. The Controller, Legal Metrology, Telangana State, Hyderabad shall take further necessary action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)

C.V. ANAND,
EX.OFFICIO PRINCIPAL SECRETARY TO GOVERNMENT.

To

The Controller, Legal Metrology, Telangana State, Hyderabad.

The Commissioner, Civil Supplies, Telangana State, Hyderabad.

All the Collectors and District Magistrates in Telangana State.

All the District Legal Metrology Officers in Telangana State.

Copy to :

P.S. to Hon'ble Minister (CS).

P.S. to Chief Secretary to Govt.

The Law(B) Department.

SC/SF.

:: FORWARDED : BY ORDER ::

SECTION OFFICER.